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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,002	12/27/2000	Fumito Takemoto	2091-0225P	3608
2292	7590	06/28/2005	EXAMINER	
BIRCH STEWART KOLASCH & BIRCH			BRINICH, STEPHEN M	
PO BOX 747			ART UNIT	PAPER NUMBER
FALLS CHURCH, VA 22040-0747			2624	

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/748,002	TAKEMOTO, FUMITO	
	Examiner	Art Unit	
	Stephen M. Brinich	2624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 November 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-6 is/are pending in the application.
 - 4a) Of the above claim(s) 4-6 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, drawn to an arrangement for image color processing, classified in class 358, subclass 1.9.
- II. Claims 4-6, drawn to an arrangement for image processing based on color and region edges, classified in class 358, subclass 2.1.

2. Inventions II and I are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because it teaches the patentable subject matter of image color processing. The subcombination has separate utility such as an image color processor independent of edge detection.

3. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for

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Group I, restriction for examination purposes as indicated is proper.

4. Newly submitted claims 4-6 are directed to an invention that is independent or distinct from the invention, as set forth above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 4-6 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

5. Applicant's arguments, see Response filed 11/29/04, with respect to the rejection of claims 1-3 under 35 USC §102 and the rejection of claim 2 under 35 USC §103 have been fully considered and are persuasive. These rejections of have been withdrawn.

However, upon further consideration, a new ground of rejection is made in view of Bar et al in view of Matsumara or Allebach et al.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bar et al in view of Matsumara or Allebach et al.

Re claims 1-3, Bar et al discloses (column 4, lines 27-44; column 5, lines 7-37; column 6, line 44 - column 7, line 10; column 10, lines 35-58; Figure 1) an image processing apparatus comprising a display means for image display, area specification means for specifying a first area having a desired color tone in a displayed image and a second area in the image or in another image, and conversion means for converting a color tone of desired area including the second area into the color tone of the first area.

Re claim 3, Bar et al further discloses (column 4, lines 27-28; column 10, lines 56-58) a computer implementation of this

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processing system (which inherently requires that the program run by the computer be provided on a computer-readable medium).

Re claims 1-3, Bar et al discloses (column 6, lines 52-61; column 7, lines 39-41) the determination of average color values in first and second selected areas. Bar et al does not explicitly disclose a method of determining this average, and in particular does not disclose the use of a histogram (which is inherently "cumulative", as a histogram is inherently a cumulative count of data values).

Matsumara (Abstract) or Allebach et al (column 7, lines 58-62) disclose examples the use of a histogram to determine an average color value.

Bar et al and Matsumara or Allebach et al are combinable because they are from the field of color image processing.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to use the histogram calculation of Matsumara or Allebach et al to determine the average color value used by Bar et al.

The suggestion/motivation for doing so would have been to provide a calculation method for the average color value used by Bar et al.

Therefore, it would have been obvious to combine Bar with Matsumara or Allebach et al to obtain the invention as specified in claims 1-3.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Brinich at 571-272-7430. The examiner can normally be reached on weekdays 7:00-4:30, alternate Fridays off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center 2600 Customer Service center at 571-272-2600 or to the USPTO Contact Center at 800-786-9199 or 703-308-4357.

If attempts to contact the examiner and the Customer Service Center are unsuccessful, supervisor David Moore can be contacted at 571-272-7437.

Faxes pertaining to this application should be directed to the Tech Center 2600 official fax number, which is 703-872-9306.

Stephen M Brinich
Examiner
Art Unit 2624

smb *SMB*
May 24, 2005



THOMAS D
~~DOYLE~~ LEE
PRIMARY EXAMINER